



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2004

Ms. Dana W. Cooley  
Attorney at Law  
P.O. Box 1006  
Snyder, Texas 79550

OR2004-3586

Dear Ms. Cooley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200587.

The City of Snyder (the "city"), which you represent, received a request for information pertaining to any domestic violence reports involving two named individuals for a specified time period. You state that some of the responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You raise subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code, which provide as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with . . . an investigation that did not result in conviction or deferred adjudication.

Gov't Code §§ 552.108(a)(1), (2). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere

with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In general, the exceptions to disclosure embodied in sections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive of one another. Thus, both exceptions generally cannot apply to the same information. A governmental body seeking to withhold information pertaining to a pending criminal investigation or prosecution should assert section 552.108(a)(1). A governmental body seeking to withhold information pertaining to a case that has concluded in a final result other than conviction or deferred adjudication should assert section 552.108(a)(2).

You inform us that the case at issue is inactive and that it may be "reopened if the victim chooses to cooperate." We note that the statute of limitations for the offense listed in the submitted offense report has not run. *See* Crim. Proc. Code art. 12.01(6) (providing limitation period of three years for any felony offense not listed in subsections one through five). Thus, we understand you to represent that the requested information pertains to a criminal case that is currently pending. Based on your representations and our review, we determine that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we determine that section 552.108(a)(1) is applicable to the information at issue.

We note, however, that basic information about an arrested person, an arrest, or a crime is generally considered public. *See* generally Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, you must release the types of information that are considered to be basic information about the incident at issue. Although section 552.108(a)(1) authorizes the city to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 200587

Enc. Submitted documents

c: Ms. Sarah Chavez  
2402 52<sup>nd</sup> Street, Suite 4  
Lubbock, Texas 79412  
(w/o enclosures)